***THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY**

+ WRIT PETITION NOS.21075 AND 21076 OF 2002

% 26-10-2005

W.P.No.21075 of 2002

M/s.Golden Granites, Maddipadu Mandal, Prakasam District. … PETITIONER

VS.

$ The Collector and District Magistrate, Prakasam District, Ongole

and others … RESPONDENTS

! Counsel for the Petitioner: MR.P.CHANDRA SHEKAR.

^ Counsel for the Respondent No.1 & 2 : G.P. for Revenue

^ Counsel for the Respondent Nos.3 to 5 : G.P. for Industries and Commerce

^ Counsel for the Respondent Nos.6 : Mr.V.Hari Haran

^ Counsel for Respondent No.7 : Mr.K.ANANDA RAO

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< Gist: > Head Note:

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WRIT PETITION NOS.21075 AND 21076 OF 2002

COMMON ORDER:

1. In these two writ petitions challenge is made to the order passed by the Collector and District Munsif, Prakasham District, Ongole on 9.10.2002 whereby and whereunder 'No Objection Certificate' granted in favour of the petitioners by the Mandal Revenue Officer, Chimakurthi came to be cancelled. M/s Golden Granites represented by its Managing Partner-Manduva Venkata Rao is the petitioner in both the writ petitions.

2. Since these two writ petitions are directed against the order dated 9.10.2002 passed by the Collector and District Munsif, Prakasham District, Ongole, they are disposed of under this common order.

3. The disputes between the parties have a chequered career. Land bearing S.No.55 admeasuring Ac.300.00 cents is situated in an Estate village. A suit being O.S.183 of 1932 on the file of District Munsif Court, Ongole came to be filed by Ramaswami Sarma, S/o Purushottam against his junior paternal uncle Chine Krishnaiah for partition and separate possession of his share. The said suit ended in compromise on 17.12.1937. In the said compromise K.Purushottam and his son Ramaswami Sarma got 4.5 anas share while Talekepalli Krishnaiah got 4.5 annas share out of 12 annas. The remaining 3 annas share belong to Guda family. Out of 300 acres in S.No.55, an extent of 223 cents was left for Nagarjuna Sagar canal, an extent of 68.86 cents was surrendered under ULC Act by T.Laxmi Narayanamma, W/o Ramaswami Sarma, an extent of Ac.37.8 cents was acquired for cattle breeding finally and an extent of Ac.86.50 cents was surrendered by the members of Boda family under Land Ceiling Act to the Government. The balance extent left over in S.No.55 is Ac.106.86 cents i.e. Ac.1.00 in S.No.55/1; Ac.6-00 cents in Sy.No.55/2, Ac.53.96 cents in S.No.55/4B and Ac.45.90 cents in S.No.56. Smt.T. Audilakshmamma, W/o Rama Krishnaiah sold Ac.10-01 cents in S.No.55/6 to M.Srinivas Rao under a registered sale deed dated 30-1-1992. However, the extent of land on measurement found to be only Ac.6.78 cents. Out of the said extent of Ac.6.78 cents, M.Srinivas Rao sold an extent of Ac.3-00 cents to M/s.Sajana

Granites, Madras under a sale deed dated 18.6.1992 and the remaining extent of Ac.3.78 cents to M.Rambabu under a registered sale deed dated 30-8-1994. A spate of litigation has been commenced after Arundathamma executed a registered sale deed in favour of M.Srinivas Rao. One Guda Venkateshwarlu filed O.S.38/92 against M.Srinivas Rao. Smt.A.V. Drugamba also filed O.S.221/92 on the file of district Munsif, Ongole. Guda Anjaneyulu and Guda Anjaneyulu and Guda Subrahmanyam filed O.S.84/92 on the file of Principal Subordinate Judge, Ongole. It appears plaintiffs in these suits failed to secure any relief sought for against the defendants therein. Sajana Granites, madras represented by its partners Parvathareddy Jayaramireddy filed O.S.No.158 of 1992 against M.Srinivasa Rao and 14 others. The sale deed executed by Smt.T.Arundatamma in favour of M.Srinivasa Rao came to be questioned in the said suit. Various issues were framed in the said suit and one of the issues was " Whether the name of the said Arundathamma or her husband or name of his father Gopala Krishnaiah did not find place in the patta?". The trial court on elaborate discussion of the evidence brought on record negatived the pleas advanced by the plaintiffs therein. It is apposite to refer the relevant portion in para 32 of the judgment dated 31.12.1999 passed in O.S.No.158 of 1992 and it is thus:

" The defendants contended that even in the plaint, it was pleaded that the wife of Ramakrishnaiah is Smt.Arundathamma. In the geneology Ex.A2, which is also filed on behalf of the plaintiff, the name of the husband of Smt.Arundathamma is mentioned as Ramakrishnaiah. It was noted therein that Ramakrishnaiah is son of Sri.Gopala Krishnaiah. No doubt, it is the contention of the plaintiffs that the person Ramakrishnaiah who is referred to in the documents Exs.A6, A11 and A12 is the adopted son of Sri.Subbaiah and not the husband of smt.Arundhatamma. The said amakrishnaiah who is son of Sri.Subbaiah himself was examined on behalf of the defendants as DW.2. In his evidence, he has categorically stated that son of Sri.gopala Krishnaiah is Ramakrishnaiah and Ramakrishnaiah is also called some times as Ramakrishna Sastry. He further stated that Sri Ramakrishnaiah son of Gopala Krishnaiah has got land in S.No.55/6 and that after his death the said property devolved on his wife, Smt.Arundathamma. He had further categorically stated that he had no landed property in S.No.55/6 in his cross examination he further stated that he is not Ramakrishnaiah who was mentioned in Ex.A11 and that it may be some other Ramakrishnaiah. Thus, he disowned himself from the entries in Ex.A11. It is not in dispute that there are only two persons with the names Ramakrishnaiah in the branch of Sri.T.(Pedda) Ramakrishnaiah. They are, one Ramakrishaiah who is the son of Gopala Krishnaiah and who is also the husband of

Smt.Arundathamma and the other is Ramakrishnaiah. Therefore, the person who was referred to in those documents must be either DW.2 who is Ramakrishnaiah who is adopted son of Sri.Subbaiah or ramakrishnaiah who is the husband of Smt.Arundathamma. DW.2 deposed that he was not the person referred to in Ex.A11. Therefore, the person, that is referred to in Ex.A11 and A.12 is only the husband of Smt.Arundathamma. During the course of enquiry before issuance of 'No Objection Certificate" the statements of Sri.Telikepalli Subramanyam son of Peda krishnaiah and Sri Guda Subramanyam son of Chidambaram who is a member of guda family in Mallaiah's branch were recorded by the Mandal Revenue Officer (DW.3). So also, under the orders of Mandal Revenue Officer, Chimakurthi (DW.3) the Village Administrative Officer of R.L. Puram (DW.7) recorded the statements of Smt.Malathi under Ex.B6 and of Smt.Vydehi (PW.3) under those statements, those persons confirmed the title of Smt.Arundathamma in respect of the land in S.No.55/6 which was sold by her under Ex.B5 to the first defendant, who in turn sold part of it under Ex.B9 to the second defendant. The learned counsel for the plaintiffs contended that except Smt.Vydehi, who is examined as P.W.3 on behalf of plaintiffs, the other three persons were not examined as P.W.3 on behalf of plaintiffs, the other three persons were not examined by the defendants in proof of their said statements and that therefore, those statements of Sri.Talikepalli Subramanyam (Ex.B.53) Sri Guda Subramanyam (Ex.B54) and Smt.Malathi (Ex.B.60) cannot be looked into. In regard to the admissibility of the said documents, the plaintiffs herein preferred revision against the orders of this court, which was decided in the decision SAJANA GRANITES AND OTHERS V.M/S.SAID ENTERPRISES (1998(2) LAW SUMMARY PAGE 367). In the said decision, it was held by his Lordship that the documents which are sought to be proved before the court below are public documents within the meaning of Sec.74 of the Evidence Act. It was further held that since the said documents are public officer's documents whether taking duly or not, they can be documents within the meaning of Sec.74 of the Evidence Act. it was no doubt argued in that decision that since those persons who are alleged to have made the statements before the officer are alive, they should have been brought as witnesses. His Lordship held that if those persons are not examined by either of the parties during the trial it shall be open for the trial court to consider that aspect of the matter and draw its own conclusions at the final stage, even though the other three persons are not examined, Smt.Vydehi was examined on behalf of the plaintiffs as P.W.3. P.W.3 in her cross-examination has admitted her signature in Ex.B.61 which was shown to her. In SIVA RAMAKRISHNAYYA V. KASIVISWANADHAN AND OTHERS (1956 ALT PAGE 763) it was held that u/s 114 of the Evidence Act, it has to be presumed that a person only puts signature in the document in taken of his execution thereof and so the proof or admission of a signature in a document requiring execution in a particular form is prima facie proof that the document was executed by the signatory. When once the execution is proved, the contents follow. (Vide the decision in GOVULA RAMAKISTAIAH V. YERRAM YALLAPPA (AIR 1959 AP 653). Therefore, in view of the admission of P.W.3 of her signature in Ex.B.61 it is for her to rebut the said presumption, which was against

her. ;If really she did not give the said statement conferring title to Smt.Arundathamma in respect of property covered by S.No.55/6, he would have certainly reported the matter to the higher officials against DW.7. Admittedly, she has not complained against DW.7 about his fabricating Ex.B61. thus, even from the evidence of P.W.3 herself the statement Ex.B.61 recorded by DW.7 was proved by the defendants. Therefore, this court can safely rely on Ex.B.61 which was given by P.W.3. P.W.3 no doubt deposed that Smt.Arundathamma told her that though she has no right at all in item NO.1 of the plaint schedule property, due to her poverty, when DW.1 approached her and offered some amount, she executed Ex.B.5 in favour of the first defendant. Much weight cannot be given to her said evidence who is admittedly one of the vendors of the plaintiffs. The learned advocate for the plaintiffs contended that the non examination of Smt.Arundathamma is fatal to the claim of the defendants. Admittedly, Smt.Arundathamma is not a part to the suit. The plaintiffs have not disputed the execution of Ex.B.5 by Smt.Arundathamma, though disputed her right over item.1 of the schedule property. The learned counsel for the defendants relying upon the decision in PANDURANG V. RAMCHANDRA (AIR 1981 SC 2235) contended that an adverse interference can be drawn for non examination of a party only when there is no other evidence on record on the point in issue. When the plaintiffs themselves did not dispute the execution of Ex.B.5 sale deed, which was proceeded by the agreement of sale Ex.B.4, by the non-examination of smt.Arundathamma, No adverse inference can be drawn against the defendants. The defendants are also relying upon Ex.B.6 which is a rough patta issued in favour of Ramakrishnaiah. No doubt the letters of the names mentioned in Ex.B.6 are not clearly visible but during the course of arguments, magnifying glass was used by the counsel to draw the attention of the court to support their rival contentions. By the use of magnifying glass or by the close and careful look at Ex.B.6 even by a naked eye it discloses that Ex.B.6 contains the name of Ramakrishnaiah. Even according to board Standing Orders, Volume-II, a rough patta would be issued to each registered holder. No doubt of a rough patta granted under section 11 or section 12 of the Estate Abolition Act,. it is only a notice issued by the revenue authorities for the purpose of settlement operations. Admittedly, the said rough patta was handed over by Smt.Arundathamma to the first defendant. If really, Ramakrishnaiah who was noted in Ex.B.6 rough patta, is not the husband of Smt.Arundathamma or if he is some other person or DW.2, Smt.Arundathamma would not have possession of the said rough patta. That itself is a circumstance in support of the contention of the defendants that Ramakrishnaiah, who is the husband of Smt.Arundathamma is the land holder in respect of the land in S.No.55/6. As against the said evidence, the plaintiffs have not adduced any evidence in support of their further except contending that if really, the husband's of Smt. Arundathamma is the pattedar under Ex.B.6 her husband's name Ramakrishna Sastry would have been mentioned. In view of this court's findings supra, the said argument does not hold water. Thus for the reasons referred to above the said argument does not stand to legal scrutiny.'

4. The purpose for referring the relevant portion of the judgment is not to make the judgment bulky but it is to pinpoint that the trial court categorically held that Arundathamma is the wife Ramakrishnaiah who is the landholder in respect of the land in s.No.55/6. The judgment and decree passed in O.S.158/92 came to be challenged by the plaintiff therein by filing A.S.No.1089 of 2000. The said appeal and CMP.Nos.16613, 16614 and 16615 of 2000 came to be dismissed on 3.8.2001 (SAJANA GRANITES, MADRAS AND ANOTHER AND MANDUVA SRINIVASA RAO AND OTHERS. The plaintiffs filed SLP (Civil) Nos. 4448-51/2002. They also sought for ad-interim order suspending the 'No Objection Certificate' for mining lease/licence and all permissions granted to the respondents therein in respect of S.No.55/6 pending disposal of SLP. The Supreme Court refused to grant interim orders. However, while granting leave passed the following order on 4.3.2002:

" We are not inclined to grant stay of the order under challenge or restrain the respondents from quarrying. However, we direct the respondents to maintain the proper accounts of quarrying and sale of granite."

5. While the suit filed by M/s.Sujana Granites and two others was pending trial, Guda Anjaneyulu and Guda Subrahmanyam who are D3 and D4 in the said suit filed W.P.No.7303 of 1993 seeking writ of mandamus against the Collector, Prakasham District, Ongole to conduct enquiry with regard to 'No Objection Certificate' issued in respect of S.No.55/4-B and 55/6 and also conducted enquiry with regard to the pending applications for grant of 'No Objection Certificate' in S.No.55/4-B and 55/6 after giving reasonable opportunity to all the effected parties. The writ petition filed by them came to be disposed of on 16.2.2000. The relevant portion of the order in the writ petition reads as follows:

" In the totality of the circumstances adverted to above the writ petition itself is disposed of directing the 1st respondent to conduct enquiries and ascertain the facts from the revenue records or other documents that any purchasers/ representationists may make available and only thereafter issue No Objections Certificate in respect of S.Nos.55/1 to 55/6 of R.L.Puram Village, chimakurthy Mandal, Prakasham District. It is however made clear that under the guise of considering the issuance of the objections certifications the 1st respondent shall not be entitled to adjudicate any disputed questions of title which are

appropriately adjudicated by the jurisdictional civil court."

In pursuance of the orders passed in W.P.No.7303 of 1993, the District Collector directed the Mandal Revenue Officer under letter dated 14.3.2000 to take necessary action in issuance of No Objection Certificate in respect of lands in S.No.55/1 to 56 of R.L.Puram Village, Chimakurthy Mandal, Prakasam District. The Mandal Revenue Officer sent his report dated 18.3.2000 to the Assistant Director of Mines and Geology, Ongole reporting that the area applied for is classified as ryotwari patta land and that the land is useful for mining purpose. The relevant portion of the report sent by the Mandal Revenue Officer dated 18.3.2000 reads as follows:

" The Mandal Revenue Inspector, Chimakurthy was stated in his enquiry report that the Chalamu Sulochana having Ac.3.00 cents in S.No.55/6, and Sri.Mandava Rambabu, S/o. Venkata Rao having Ac.3.78 cents in S.No.55.6 and he also stated that the above two are partners in the Golden Granites, and on behalf of Mandava Rambabu his father of Mandava Venkata Rao had all rights and there is no objections to do black granite quarrying to an extent of Ac.6.78 cents in S.No.55/6 on giving lease to Golden Granites for 15 years. Also he recommended to issue the No Objection Certificate. Also he stated that, there is no constructions on this land it is not fit for agriculture purpose, it is patta land, this land is useful for mining purpose only and there is no plough, and on stating that he recommended to issue quarry lease.

Based on the Mandal Revenue Inspector, Chimakurthy recommendations, I inspected the land personally as specified by the applicant. There is no plough on this land and also no constructions. It is not fit for agriculture purpose. It is rocky land and it is only useful for quarrying operations so informed that there is no objections to issue lease to do black granite quarry for 15 years to the applicant Sri.Mandava Venkata Rao, managing Partner of Sri Golden Granites to an extent of Ac.6.78 cents in S.No.55/6 of R.L.Puram village. Along this, sketch and condensed sketch are enclosed and sending for further necessary action."

It appears two applications, one by M/s Reliance Granites Private Limited and another by M/s Golden Granites, were submitted for grant of quarry lease in respect of Ac.6.78 cents in S.No.55/6. While the applications are pending consideration, M/s Reliance Granites Private Limited withdrew its application. Therefore, the application of M/s.Golden Granites was considered and prospecting licence was granted in its favour by the Director, Mines and Geology under proceedings dated

29.8.2001. Thereafter, the petitioner applied for grant of quarry lease and the same came to be granted by the Director, Mines and Geology, Hyderabad under proceedings dated 12.11.2001 for a period of twenty years under Rule 12(5)(o)(1) of A.P. Minor Mineral Concession rules, 1966 subject to certain conditions.

6. Two writ petitions came to be filed questioning the grant of prospecting licence and quarry lease in favour of M/s.Golden Granites. One by Guda Anjaneyulu and others being W.P.No.25860 of 2001 and another by M/s.Ramatirtham Granites represented by its Managing Partner A.V. Ramanaiah being W.P.No.24899 of 2001. Both the writ petitions ended in dismissal by this court under order-dated 6.2.2002 vide GUDA ANJANEYULU AND OTHERS V. GOVERNMENT OF A.P. AND OTHERS. It is stated that the appeals being W.A.Nos.260 and 307 of 2002 assailing the orders passed in the W.P.Nos.24899 and 25806 of 2001 are pending disposal. While so, Guda Anjaneyulu filed application on 28.2.2000 and whereas Ramatirtham Granites filed application on 4.4.2002 assailing the order of the Mandal Revenue Officer granting NOC in favour of the petitioner. The District Collector entertained both the applications and ordered notice to the petitioner. Both the parties produced copies of certain documents on which they relied on before the District Collector during the course of enquiry. The District Collector formulated the following points for consideration:

> " 1. Whether the No Objection Certificate issued by the Mandal Revenue Officer, Chimakurthy in his Rc.B165/2000, dated 18.3.2000 in respect of the lands measuring and extent of Ac.6-78 cents in S.No.55/6 of R.L.Puram village of Chimakurthy Mandal in favour of M/s.Golden Granites is valid or not.
>
> 2. Whether the NOC issued by the Mandal Revenue Officer is suffering with any procedural irregularities or not?
>
> 3. Is the respondent company entitled for NOC from the Revenue Department for doing mining.
>
> 4. What rights the parties are entitled for?

The District Collector recorded a finding that the Mandal Revenue Officer should not have issued NOC since a clear picture has not emerged regarding the entitlement of M/s Golden Granites company over the land in question. It is suffice to refer the

findings of the District Collector on Point Nos.4 and it is thus:

" POINT NO.4: In the face of the facts and circumstances explained above, the rights of the parties can be determined only by a competent civil Court. The suits which have been mentioned by both the parties are mere injunction suits in no suit the title of the respondents has been made clear. Hence, the parties have to establish their right over the land in a competent Civil Court before applying for NOC from the Revenue Authorities.

Hence, under the circumstances explained above, the NO Objection Certificate issued by the Mandal Revenue Officer, Chimakurthy in favour of Sri.Manduva Venkata Rao, Managing Partner of M/s.Golden Granites in his L.Dis.B.165/2000, dated 18.3.2000 is hereby cancelled."

The narration of facts would be incomplete without reference to the suits which are stated to be pending before the courts in Ongole. O.S.12/2000 filed by Guda Anjaneyulu and Guda Subrahmanyam for declaration of title and consequential permanent injunction in respect of land admeasuring Ac.6.71 cents compensation S.No.55/6 is pending disposal. O.S.971/ 2001 filed by A.V.Ramanaiah for permanent injunction restraining the petitioner herein from interfering with possession in respect of the land admeasuring Ac.3.38 cents comprising S.No.55/6 is pending disposal. O.S.54/94 on the file of Additional Senior Civil Judge, Ongole, filed by B.Barsimha Rao and Rajineni Srinivasa Rao against T.Ramakrishnaiah and 55 others is pending trial. The said suit relates to S.No.55/4B admeasuring 15 acres. Therefore, it can be said without any controversy that the lands claimed by the petitioner herein does not form part and parcel of the lands claimed by the plaintiffs in O.S.54/94. The said suit subsequently came to be transferred to the file of District Judge, Ongole and renumbered as O.S.15/2000 and it is stated to be pending disposal. The petitioner filed the present writ petitions assailing the order passed by the Collector and District Munsif, Prakasham District, Ongole on 9.10.2002 whereby and whereunder No Objection Certificate granted in favour of the petitioner granted by the Mandal Revenue Officer, Chimakurthi came to be cancelled.

7. D.Suresh Babu filed WPMP.No.32037 of 2003 in W.P.No.21075 of 2002 and WPMP.No.33968 of 2003 in W.P.No.21076 of 2002 seeking his impleadment as

party respondent in the respective writ petitions. He claims to have purchased 94 cents from legal heirs of Guda Rambhotlu who is a joint pattedar of S.No.55 under a registered sale deed dated 19.7.2003 for Rs.2,79,180/- and obtained symbolic possession. It is suffice to refer paras 3 and 4 of the affidavit filed in support of WPMP.No.32037 of 2003 in W.P.No.21075 of 2002 and it is thus:

> " 3. I submit that in most of the R.L.Puram village lands the world famous Black Galaxy Granite is found including the present disputed property, and excavating the same. From 1990 onwards some influenced people attempted to grab these lands by using their muscle and money power. Some people began the litigation's based on the fraudulent, fictitious sale deeds, to obtain these lands even though their vendors don't have any right and title over the property. The partners of writ petitioner's firm are claiming the right and title based on the fictitious sale deed dated 20.1.1992.
>
> 4. I submit that from the beginning i.e., from 1992 onwards the partners of writ petitioner's firm done so many fraudulent activities to achieve their goal i.e., to obtain a mining lease to the present disputed land even though their vendors are not absolute owners, and also they misleaded the trial court in O.S.158/1992 and finally they reached their goal in the year 2001. The entire mining Department helped to the writ petitioner, in violating this Hon'ble Court order and on committing frauds. The entire thing happens why because, two of the partners of the writ petitioner's firm are wife and daughter of C.Gopala Reddy who is Deputy Director of Mines and Geology, Guntur at the time of issuing the NOC, prospecting lease and mining lease."

By reading the affidavit filed in support of the two implead petitions, it can be said without any controversy that the implead party knew about the litigations over the land bearing S.No.55/6 by the time he alleged to have purchased 94 cents from one of the joint pattedars. These two implead applications are allowed on 12.4.2004 and accordingly he came on record as 8th respondent in both the writ petitions.

8. The respondents filed their counter affidavits supporting the order of the Collector and District Magistrate, Ongole whereby and whereunder the No Objection Certificate issued by Mandal Revenue Officer came to be withdrawn. One Movva tirumala Krishna Babu has sworn to the counter affidavit filed by 1st respondent in

both the writ petitions. The sum and substance of the counter affidavit is that as per A.P. Mines and Geology Act and as per the instructions issued in G.O.Ms.No.181, Industries and Commerce (Mines-1) Department, dated 28.8.1998 the revenue authorities have got a limited role to play in this regard by way of a report to the Assistant Director of Miens and Geology and to the Director of Mines about the entitlement of the petitioner over the land in question. If there is a dispute or title over it is not clear, the Revenue authorities have no business to recommend the case. In view of the facts and circumstances of the case, the then Collector and District Magistrate, Ongole cancelled the 'No Objection Certificate' issued by the Mandal Revenue Officer, Chimakurthy in respect of the land in question vide Collector, Ongole proceedings R.Dis.1568-2000-E1, dated 9.10.2002.

9. The counter affidavit of 6th respondent-M/s.Ramathertham Granites in W.P.No.21075 of 2002 in brief is :

6th respondent is a firm registered under partnership Act on 9.2.2000. Telekepalli Subrahmanyam was the absolute owner of land admeasuring Ac.3.36 cents covered under S.No.55/6 of R.L.Puram village, Cheemakurthy Mandal, Prakasam District. His three sons and wife are partners in 6th respondent-firm. Telekepalli Arundhatamma from whom the petitioner traced the title over the land is not wife of Ramakrishnaiah and she is the wife of one Ramakrishna Sastry who died in the year 1967. 6th respondent filed O.S.971 of 2001 on the file of Junior Civil Judge, Ongole on 31.10.2001 against Golden Granites, but subsequently withdrew the same on 1.11.2002 without prejudice to its rights. This Court while disposing of W.P.No.7303 of 1993 on 16.2.2000 directed the District Collector, Prakasam to conduct enquiries and ascertain the fact from the revenue records or other documents which any purchasers/ representationists may make available and only thereafter issue NOC in respect of S.No.55/1 to 55/6 of R.L.Puram village, Cheemakurthy Mandal, Prakasam District. 6th respondent submitted a representation on 23.2.2000 to respondents 1 to 5 not to grant any NOC to the writ petitioner and it submitted necessary documents during enquiry. The petitioner-firm submitted an application dated 25.5.2000 for grant of prospecting licence. The Mandal Revenue Officer issued NOC in favour of the petitioner-firm with an ante

date as 18.3.2000 with an intention to overcome the written objections filed by 6th respondent on 20.3.2000. Therefore, the NOC issued by MRO is not only irregular but also illegal and thus the District Collector is justified in canceling the NOC issued by MRO.

10. The counter of 6th respondent in W.P.No.21076 of 2002, in brief, is:

His ancestors being the share-holders of erstwhile agraharam were owning an extent of Ac.6.71 cents out of Ac.45.90 cents in S.No.55/6 in the said village. In the year 1992 attempts were made to obtain NOC from MRO for his land and therefore the suit O.S.No.84/92 on the file of Principal Senior Civil Judge, Ongole was filed impleading the Assistant Director, Miens and Geology as defendant. When the authorities were contemplating to issue NOC pending the suit, W.P.No.7303 of 1993 came to be filed seeking a direction to the District Collector, Prakasham to conduct enquiry before issue of NOC. The said writ petition came to be disposed of on 16.2.2000 directing the District Collector, Ongole to conduct enquiry and ascertain the facts from the revenue records and other documents and only thereafter issue NOC in respect of Sy.o.55/1 to 55/6 of R.L.Puram, Cheemakurthy Mandal, Prakasham District. The Collector, Ongole in his proceedings dated 10.7.1994 addressed to the Assistant Director, Mines and Geology, Ongole informed that the NOC issued by the Mandal Revenue Officer in respect of above referred lands were kept in abeyance till the revenue records are fully verified and the civil disputes are disposed of. The suit filed by him for injunction came to be dismissed for default and subsequently he filed O.S.12/2000 on the file of District Judge, Ongole for declaration of title and permanent injunction in respect of the land referred to above in S.No.55/6 to the extent of Ac.6.17 cents. I deem it appropriate to refer para 7 of the counter affidavit and it is thus:

" 7. It is submitted that since this Honourable Court disposed of our W.P.No.7303 of 1993 with a direction to the District Collector to conduct enquiry and then only issue NOC and subsequent representations by us including notice through advocate dt.20.9.2001, the other contention of the petitioner that the orders of the District Collector are without jurisdiction is totally incorrect and untenable. The impugned orders are passed by the District collector pursuant to the enquiry conducted in terms of directions of

this Honourable Court in W.P.No.7303/93. The other contentions of the petitioners that since there is no prayer under G.O.Ms.No.181 to cancel the NOC/report of the MRO, the impugned proceedings are without jurisdiction is incorrect and untenable. It is pertinent to submit that the partners of the writ petitioner were parties of W.P.No.7303 of 1993 and the said orders became final. The other contention of the petitioners that the directions in W.P.No.7303/93 is per-incuriam is also untenable and unsustainable. It is incorrect to say that there is no illegality in the NOC granted by the MRO, since our W.A. is pending disposal. It is further submitted that the proceedings before the District collector relates only to the NOC granted by the MRO whereas the proceedings before the Honourable Suprem ecourt relates to rival claims by the parties in respect of the said lands and at any rate in view of the pendency of the said matter before the Honourable Supreme court the writ petitioners cannot rely on the judgment which are subject mater in the proceedings. Since the petitioner's firm came into existence only after grant of NOC by MRO, the findings of the District Collector in the said proceedings are legal and valid. The other contention of the writ petitioner that the suits filed by us is not maintainable is without any merit and unsustainable."

11. Counter affidavit of 8th respondent in both the writ petitions is one and the same. It is suffice to say that he is the purchaser of the property pendente lite.

12. Heard E.Manohar, learned senior counsel appearing for the petitioner in both the writ petitions, learned Government Pleader for Revenue appearing for respondents 1 to 5 in both the writ petitions, D.Prakash Reddy, learned Senior Counsel appearing for 6th respondent in W.P.No.21075 of 2002, B.Narasimha Sarma, learned counsel appearing for 6th respondent in W.P.No.21076 of 2002 and N.Subba Reddy, learned senior counsel appearing for 7th respondent in both the writ petitions.

13. E.Manohar, learned senior counsel appearing for the petitioner in both the writ petitions submits that the Collector has no power to recall the NOC issued by the MRO. He refers to G.O.Ms.No.181, dated 28.5.1998 in support of his submissions. It is also submitted by him that the applicants before the District Collector, Ongole seeking cancellation of NOC issued in favour of the petitioner by MRO tried to

secure the same relief before the Supreme Court in the SLP and the Supreme Court refused to grant relief and directed the respondents therein to maintain the proper accounts of quarrying and sale of granite such is the situation, the order passed by the District Collector, Ongole withdrawing the NOC issued by MRO is wholly unwarranted. He took me to the SLP papers more particularly to the interim prayer sought for in the SLP which reads as follows:

" 8. Interim Prayer:

It is, therefore, most respectfully prayed that this Honourable Court may be pleased to:

a. grant ad interim ex parte injunction restraining the respondents 1, 2 and 10 herein, either themselves or through any other person from quarrying black galaxy granite in S.No.55/6, Lakshmipuram (R.L.Puram) Chimakurthy Mandal, Prakasam District, Andhra Pradesh, or in any other manner attempting to undertake any quarrying activity on the said property pursuant to the impugned judgment and final order of the Honourable High Court of Judicature of Andhra Pradesh at Hyderabad in A.S.NO.1089 of 2000, pending disposal of the Special Leave Petition.

b. Grant ad interim ex parte orders suspending the 'No Objection Certificate', the mining license/lease and all permissions granted to respondents 2 and 10 by respondents 5 to 9 for quarrying black galaxy granite in S.No.55/6, Lakshipuram (R.L.Puram) Chimakurthy Mandal, Prakasam District, Andhra Pradesh, pending disposal of the Special Leave Petition.

And

Pass such further and or other order or orders as this Honourable Court may deem fit and proper in the facts and circumstances of the present case."

Learned senior counsel would contend that 6th respondent in both the writ petitions questioned the NOC as well as prospecting license and mining lease granted in favour of the writ petitioner by filing two writ petitions being W.P.Nos.24899 and 25806 of 2001. In both the writ petitions NOC issued by the MRO came up for consideration. A single Judge of this court dismissed both the writ petitions by an order dated 6.2.2002 and assailing the said orders they preferred Writ Appeals which are pending disposal and therefore the action of 6th respondent in filing

application before the District Collector, Ongole after disposal of the writ petitions filed by them to cancel the NOC is only to circumvent the adverse orders received by him in the earlier two writ petitions.

14. D.Prakash Reddy, learned Senior Counsel appearing for 6th respondent in W.P.No.21075 of 2002 submits that the purpose of G.O.Ms.No.181, dated 28.5.1999 is to conduct enquiry and it does not exclude the over all power of superintendence of the District Collector in respect of granting NOC. He further submits that the issuance of NOC by the MRO was not in tune with the directions of this court in W.P.No.7303 of 1993 and thus the District Collector, Ongole in exercise of powers of overall superintendence cancelled the NOC and, therefore, the order impugned in these writ petitions is legal and proper and the same is not required to be interfered by this court in exercise of the powers under Art.226 of the Constitution of India. He also submits that the petitioner-firm was not at al in existence as on the date of the order passed in W.P.No.7303 of 1993 i.e. on 16-2-2000 and it came into existence on 25.5.2000 and thus the contention of the petitioner-firm that it submitted application in the year 1999 cannot be sustained. He refers the order passed by the Director, Mines and Geology on 29.8.2001 and 12.11.2001 whereunder no reference has been made to the application said to have been filed by the petitioner-firm in 1999.

15. N.Subba Reddy, learned counsel appearing for 7th respondent in both the writ petitions submits that the order of the District Collector, Ongole is inconformity with the directions given by this Court in W.P.No.7303 of 1993 and therefore the order impugned in the writ petition needs no interference. He refers to para 4 of G.O.Ms.No.181, dated 28.5.1999 with regard to the power of the District Collector to express his disagreement with the NOC issued by the MRO. Para 4 of the said G.O. reads as follows:

> " 4. If the District Collector is in agreement with the report of the Mandal Revenue Officer be need not make any further report to Director of Mines and Geology. However, if the District Collector disagrees with the recommendations to the Director of Mines and Geology within 30 days from the date of receipt of report from Mandal

> Revenue Officer. In case no report is received from the District Collector within 30 days it will be assumed that the Collector has no objection in grant of prospecting licence/ Mining lease or quarry lease."

By referring the above paragraph, learned senior counsel submits that the District Collector has already seized the matter in pursuance of the directions passed in W.P.NO.7303 of 1993 and in which case issuance of NOC by MRO is improper.

16. B.Narasimha Sarma, learned counsel appearing for 6th respondent in W.P.No.21076 of 2002 submits that in view of the pendency of O.S.12/2000, the Mandal Revenue Officer ought not to have issued NOC and, therefore, in the circumstances of the case, the District Collector is justified in canceling the NOC issued by the MRO.

17. The issue that falls for consideration is whether the District Collector in the circumstances of the case is justified in canceling the NOC issued by the Mandal Revenue Officer?

18. It is well settled that while exercising the power of judicial review the court is mere concerned with the decision making process than the merit of the decision itself. While examining and scrutinizing the decision making process it becomes inevitable also to appreciate the facts of a given case as other wise decision cannot be tested under the grounds of illegality, irrationality or procedural impropriety. How far the court of judicial review can re-appreciate the findings of facts depends on the grounds of judicial review. For example, if the decision is challenged as irrational, it would be well high impossible to record a finding whether a decision is rational or irrational without first evaluating the facts of the case and coming to a plausible conclusion and then testing the decision of the authority on the touch stone of facts laid down by the court with special reference to a given case. Thus, to a limited extent of scrutinizing the decision making process it is always open to the court to review the evaluation of facts by the decision maker.

19. M/s.Ramatheertham Granites, represented by its Managing Partner, A.V.Ramanaiah-6th respondent in W.P.No.21075 of 2002 and Guda Anjaneyulu-6th respondent in W.P.No.21076 of 2002 have questioned the prospecting licence and quarry lease granted in favour of the petitioner-firm by filing W.P.Nos.24899 and 25806 of 2001. In those two writ petitions the NOC granted by the MRO came up for consideration. This court by an order dated 6.2.2002 dismissed both the writ petitions and the order passed therein came to be challenged by filing writ appeals and they are stated to be pending. It is also not out of place to mention that 6th respondent in the respective writ petitions did not chose to approach the District Collector, Ongole questioning the NOC issued by the MRO till the disposal of the two writ petitions (W.P.No.24899 and 25806 of 2001) i.e. on 6.2.2002. It was only after they became unsuccessful in those two writ petitions resorted to filing applications before the District Collector, Ongole seeking cancellation of the NOC issued to the petitioner-firm. They claim to have right over S.No.55/6. M/s Sajana Granites and two others filed O.S.158 of 1992 for declaration of title and consequential injunction in respect of Ac.5-33 cents and Ac.1-99 cents under S.No.55/6. Guda Anjaneyulu is a party to the said suit. The Managing Partner of 6th respondent in W.P.No.21075/2002 is also one of the plaintiffs in the said suit as a GPA holder of Ananthabotla Venkata Durgamba-3rd plaintiff in the suit. The suit on full dressed trial ended in dismissal. The validity of the sale deeds on which the petitioner-firm relied on fell for consideration in the said suit. Ex.B.5 is the registered sale deed dated 20-1-1992 executed by Arundathamma in favour of Manduva Srinivasa Rao. Ex.B.9 is the sale deed dated 18.6.1992 by Srinivasa Rao in favour of Sai Enterprises in favour of M.Rambabu. the validity of Exs.B.5, B.9 and B.14 came to be upheld in the said suit. The suit ended in dismissal and the plaintiffs 1 and 2 therein unsuccessfully challenged the judgment and decree passed in O.S.No.158 of 1992 in this court by filing appeals and latter on the matter came to be carried to Supreme Court by filing SLP. The Supreme Court refused to grant interim relief which has been extracted in the aforesaid paras of the judgment and instead directed the respondents therein to maintain proper accounts of quarrying and sale of granites. The District Collector, Ongole having referred the earlier litigation between the parties failed to take note of the observations made by this Court in W.P.No.25806 and WP.24899 of 2001 and the findings recorded by the trial court as well as the appellate court in civil suit. It amounts to non-application of mind of the

authority, which passed the impugned order.

20. In view of the above discussion, I find that the order impugned in the writ petition is not legal, proper and the same is required to be set aside. Accordingly, both the writ petitions are allowed setting aside the impugned order passed by the District Collector, Ongole. No costs.

Dated: 26-10-2005. (B.Seshasayana Reddy, J)

TNB

LR COPY TO BE MARKED.

THE HONOURABLE SRI JUSTICE

B.SESHASAYANA REDDY

WRIT PETITION NOS.21075 AND 21076 OF 2002

Dated : 26-10-2005.